

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

87

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 17,682

FILED AUG 19 1963

VERNON COOPER,

Nathan J. Paulson
CLERK

v.

UNITED STATES OF AMERICA,

Appellant,

G G G
Appellee.

No. 17,683

GEORGE COOPER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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JOINT APPENDIX

[Filed July 2, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on May 1, 1962

THE UNITED STATES OF AMERICA)	
v.)	Criminal No. 592-62
VERNON COOPER)	Grand Jury No. Original
GEORGE W. COOPER)	Violation: 22 D.C.C. 1801 (Housebreaking) 22 D.C.C. 2901 (Robbery)

The Grand Jury Charges:

On or about March 10, 1962, within the District of Columbia, Vernon Cooper and George W. Cooper entered the dwelling of Julia M. Burruss, with intent to steal property of another.

SECOND COUNT:

On or about March 10, 1962, within the District of Columbia, Vernon Cooper and George W. Cooper, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and from the immediate actual possession of William R. Burruss, property of William R. Burruss, of the value of about \$113.00, consisting of the following: \$73.00 in money and one gun of the value of \$40.00.

THIRD COUNT:

On or about March 10, 1962, within the District of Columbia, Vernon Cooper and George W. Cooper, by force and violence and against resistance and by sudden and stealthy seizure and snatching and by putting in fear, stole and took from the person and from the immediate actual possession of Julia M. Burruss, property of Julia M. Burruss, of the value of about \$100.00, consisting of one wrist watch of the value of \$50.00 and one finger ring of the value of \$50.00

FOURTH COUNT:

On or about March 10, 1962, within the District of Columbia, Vernon Cooper and George W. Cooper entered the apartment of Junior C. Buford, Sr., with intent to steal property of another.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/H. G. Dodd
Foreman

[Filed July 6, 1962]

PLEA OF DEFENDANT
(Vernon Cooper)

On this 6th day of July, 1962, the defendant Vernon Cooper, appearing in proper person and without counsel, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of
RICHMOND B. KEECH
Presiding Judge
Criminal Court # 2
HARRY M. HULL, Clerk
By /s/H. G. Dodd
Deputy Clerk

Present:

UNITED STATES ATTORNEY

By VICTOR CAPUTY
Assistant United States Attorney

D. COPELAND
Official Reporter

[Filed August 24, 1962]

PLEA OF DEFENDANT
(George W. Cooper)

On this 24th day of August, 1962, the defendant George W. Cooper, appearing in proper person without counsel, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District Jail.

By direction of

GEORGE L. HART, JR.
Presiding Judge
Criminal Court # ASSIGNMENT
HARRY M. HULL, Clerk
By /s/ H. G. Dodd
Deputy Clerk

Present:

United States Attorney

By Harold Titus
Assistant United States Attorney

George Davis
Official Reporter

[Filed November 27, 1962]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
 Plaintiff)
 vs.) Criminal No. 592-62
VERNON COOPER, et. al.)
 Defendant)

MOTION OF DEFENDANT, VERNON COOPER
TO SUPPRESS TESTIMONY AND EVIDENCE SEIZED IN SEARCH

Defendant, Vernon Cooper, through his Court-appointed Counsel, moves this Honorable Court for an Order:

1. Suppressing, as evidence on the trial of the above-captioned case, any and all articles of property, including but not limited to, pistols, rifles, articles of clothing, jewelry, and money, seized by members of the Metropolitan Police Department, District of Columbia, at the time said defendant was arrested for the Commission of Crimes as alleged in the indictment:

2. Suppressing testimony of identification of said defendant, or any other testimony, with regard to evidence obtained subsequent to said defendant's arrest:

For the following reasons:

a. Said evidence was obtained in violation of defendant's rights under the 4th and 5th Amendments to the Constitution of the United States and under rules 41(e) and 5(a) of the Federal Rule of Criminal Procedure.

Michael Ritz, Jr.
Attorney for Defendant
(Court Appointed)
423 Washington Building
Washington 5, D. C.
METropolitan 8-6996

[Filed December 5, 1962]

POINTS AND AUTHORITIES IN
OPPOSITION TO THE DEFENDANT
VERNON COOPER'S MOTION TO SUPPRESS

I. The Defendant's Arrest and Subsequent Search of His Premises Did Not Violate His Fourth Amendment Rights.

For a period of time prior to May 1, 1962, the City of Washington, D. C., had been plagued by a series of armed holdups of liquor, furniture, and grocery stores and private dwellings, perpetrated by persons unknown. Approximately twenty days later officers of the Metropolitan Police Department received information, from a known source, that the defendants and others were the perpetrators of many

of these unsolved robberies and that some of the paraphernalia utilized in committing these offenses was presently located at 1029 Lamont Street, N. W., the residence of the defendants. The source was then permitted to identify the malefactors in connection with the various unsolved armed robberies from the official police files. Among the individuals identified by the source were the defendants in the instant cases. The description of the defendants in the police files tallied with the description of the bandits given to the police by the various holdup victims. Shortly thereafter, the police were able to corroborate some of the information imparted to them by the known source. The police were then advised by this same source that the defendants and the subjects involved in other cases were at that moment preparing to leave Washington, D. C., to attend a funeral in North Carolina and they might not return to this jurisdiction for some time.

It was upon the foregoing information and basis that police officers and scout cars were immediately dispatched to the address at 1029 Lamont Street, N. W., with orders to apprehend and arrest the defendants. The defendant Vernon Cooper was arrested on the third floor of the aforesaid residence. Following this defendant's arrest, certain weapons and other fruits of various crimes were taken into custody by the police. Simultaneously, the police learned that the defendant George Cooper had already departed for North Carolina.

It is respectfully contended that based on the foregoing the officers' actions were certainly permitted under the law and the defendant's arrest and any subsequent search were equally valid. United States v. Rabinowitz, 339 U.S. 56. It is clear that a police officer may arrest without a warrant if he has reasonable cause to believe that a felony has been committed. Under the law, the test is whether or not there was probable cause for the arrest, "information sufficient . . . to warrant a man of reasonable caution in the belief that an offense has been or is being committed" Mills v. United States, 90 U.S. App. D. C. 305.

The decisive factors for an arrest without a warrant and a

subsequent search are that all the circumstances are to be considered together, in a sum total; that the circumstances to be considered are those of the moment, that the impression to be evaluated is the impression upon the mind of a reasonably prudent police officer; and that the impression made upon him by the circumstances is a reasonable belief that a crime has been, is being, or is about to be committed.

Lewis R. Dixon v. United States, 111 U.S.App.D.C. 305, 296 F2d 427. Further, it has been held that a police officer has sufficient probable cause to make an arrest without a warrant based on information received from an informant rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge. Draper v. United States, 358 U.S. 307.

The facts in the instant case appear to be in line with those developed in Wrightson v. United States, 98 U.S.App. 377, and the decision therein would appear to be dispositive of counsel's present argument. The arrests in the instant case being valid, then there is a permissible area of search without benefit of warrant. Agnello v. United States, 269 U.S. 20; United States v. Rabinowitz, supra; Harris v. United States, 331 U.S. 145; Carroll v. United States, 267 U.S. 132. Under the aforementioned decisions it is respectfully submitted that the police officer's search of Vernon Cooper's room, subsequent to his arrest was legally valid.

II. The Testimony Of Certain Prospective Government Witnesses Is Not Subject To Suppression Under The Rules.

Rule 41(e) of the Federal Rules of Criminal Procedure provides in pertinent part that "a person aggrieved by an unlawful search and seizure may move . . . for the return of the property," on certain stated grounds. The term "property" as used herein is defined in Rule 41(g) of the aforementioned Rules to include "documents, books, papers and any other tangible objects."

First, it is the position of the Government that in connection with the identification of the defendant by the different victims there

was no "unlawful search and seizure." Secondly, the identification of a defendant by a witness is not property, as that term is used in the aforementioned Rules 41(e) and 41(g).

The cases cited by the defendant in support of his motion to suppress the testimony of all identifying witnesses relates to instances in which something was taken from the defendant, e.g., marked money, fingerprints, confession. These were "tangible objects". The identification of the defendant made during a period in which he was legally under arrest certainly is not to be considered in the same category. The reference made by counsel to the case of On Lee v. United States, 343 U.S. 747, is only dictum appearing in a dissenting opinion, and in any event refers to seizures from the defendant.

For the foregoing reasons and for such other reasons as may be urged at the time of the hearing, the defendant Vernon Cooper's motion to suppress should be denied.

/s/ David C. Acheson
United States Attorney

Alfred L. Hantman
Assistant United States Attorney

[Certificate of Service]

[Filed December 7, 1962]

On this 7th day of November 1962, came the attorney of the United States, the defendant in proper person and by his attorney, Michael Ritz, Jr., Esquire; whereupon the motion of the defendant to suppress testimony and evidence seized in search, coming on to be heard, is argued and DENIED by the Court.

The defendant is remanded to the District of Columbia Jail.

By direction of

Alexander Holtzoff
Presiding Judge
Criminal Court # Two

Present:
United States Attorney

By Alfred Hantman
Assistant United States Attorney

HARRY M. HULL, Clerk
By /s/Ronald H. Tonkin

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 vs.) Criminal No. 592-62
)
VERNON COOPER,)
)
 Defendant.)

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
MOTION TO SUPPRESS

Washington, D. C.
December 7, 1962.

The above cause came on for hearing of motion to suppress
before THE HONORABLE ALEXANDER HOLTZOFF, United States
District Judge.

* * * * *

3 MR. RITZ: There was an arrest made of the defendant in his
home on the 20th of May, 1962. At the time he was arrested the police
had no warrant for his arrest.

Subsequent to the arrest the defendant's room and person were
searched by the police and certain evidence was seized by the police
which we believe will be used against this particular defendant.

THE COURT: Now what was seized?

MR. RITZ: There were some coins, a gun, and an item of jewelry,
I believe a wristwatch was taken from the defendant either from his
room or from his home or somewhere on the premises. I believe there
was a collection of foreign coins, Your Honor, in addition to American
currency. I believe there were several foreign coins which were taken
from the defendant and I believe which were identified as being the property
of one of the complaining witnesses in this indictment.

* * * * *

4 MR. HANTMAN: If Your Honor please, it is the Government's
position that for a substantial period prior to May 20th, 1962 this city
had been plagued by a series of armed hold-ups of various retail est-
ablishments. On that date the police received a telephone communication

from a known informer concerning the identity of the perpetrators of these various offenses, who were theretofore unknown to the police.

5 The police met the informer, information was transmitted by the informer to the police identifying these people. The description of the perpetrators matched those given to the police by the victims of these various crimes.

The police were also advised at the time that the culprits were then preparing to leave the jurisdiction to attend a funeral in North Carolina.

This being Sunday, if Your Honor please, May 20th 1962, at about 3 o'clock in the afternoon, with the information available to the police that the defendants were about to abscond from the jurisdiction, it is the Government's position that the police, with the information then available to them, had ample probable cause to go to the residence then occupied by the defendant, namely, 1029 Lamont Street, Northwest, and effect the apprehension of the defendant before he left the jurisdiction; and having legally effected his apprehension, the police were then empowered to make a reasonable search of the vicinity.

THE COURT: Now what was seized?

MR. HANTMAN: As a result of the defendant's arrest, Your Honor, there was seized from his room a rifle, several shotguns, several pairs of sun glasses, and a jar of pennies which was taken previously from an epilepsy fund theft here in town.

6 THE COURT: Now what is the charge on which --

MR. HANTMAN: Robbery, Your Honor.

THE COURT: Was this lot of coins claimed to be part of the proceeds of the robbery?

MR. HANTMAN: Proceeds of a robbery, Your Honor. Not in this particular case, however. It's proceeds of another offense, Your Honor.

THE COURT: Then you are not going to use it in this case?

MR. HANTMAN: No, we will not use the coins in this particular case, no, sir.

I may say to Your Honor that there are four companion cases before this Court involving this defendant and others.

* * * *

MR. HANTMAN: Officer Blancato.

THE COURT: I always follow the procedure of having the Government go forward with the evidence in order to justify the arrest and
7 search.

* * * *

LOUIS BLANCATO, JR.

called as a witness by the Government, having been duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. HANTMAN:

Q. Would you give us your full name and assignment, please?

8 A. Detective Louis Blancato, Jr. I am a Detective assigned to the Metropolitan Police, Washington, D. C.

* * * *

Q. And your assignment, Officer Blancato? A. I am attached to the Robbery Squad of the Metropolitan Police, Washington, D. C.

Q. And how long have you been so assigned, Officer? A. Since November 10th, 1957.

Q. Officer Blancato, during the period beginning late last year and up to and through part of May of this year was the City of Washington plagued by a series of armed robbery hold-ups of various retail establishments? A. Yes, sir, it was.

Q. Were there weapons used in these offenses? A. Yes, sir.

Q. Now, did the various victims of these armed hold-ups give to the Robbery Squad descriptions of the various persons who committed these offenses? A. Yes, sir, they did.

Q. Were the descriptions of the offenders similar in many instances?

A. Yes, sir, they were.

* * * *

Q. Now, on Sunday, May 20th, 1962 did the Robbery Squad come into possession of certain information concerning these offenses?

A. Yes, sir.

Q. What was that information? A. At 12:45 p.m. on Sunday, May 20th, 1962 Detective Linn of the Robbery Squad received a phone call from a woman who told him that she had certain information, that she knew who had committed many armed robberies in the District of Columbia, and that she would be willing to give this information to the police if she could get the \$500 reward that the Retail Liquor Association have published for information in several of these cases and that if we could do something for her as she was on probation for a shoplifting

10 case.

Q. Did the informant identify herself at this time? A. At this time, no.

Q. Did you arrange to meet this informant? A. Yes, at this time Detective Linn motioned to me and I picked up the phone and listened, and we made arrangements with her to meet her at 17th and Benning Road, Northeast to discuss this matter.

Q. Did you pursue that, or did you order it pursued? A. Well, I called for Detective Samen and his partner, who were out on the street, and asked them to respond to the 17th and Benning Road, Northeast to talk to this woman.

Q. They were in a police cruiser? A. Yes, sir.

Q. As a result of your instructions what occurred, sir? A. Well, about five after one the same woman called back again and wanted to know how come the police hadn't got there, and we told her that the officers would be there momentarily, to wait. And then I guess about 20 minutes or so later Detectives Dolinger and Samen walked into the Robbery Squad with this female, this colored female, who we later found out -- who she later told us her name was Naomi Quinones.

Q. Did you interrogate this lady concerning the matters that you were interested in? A. Yes, sir.

11 Q. What information did you learn from her? A. She had given certain information to Detective Samen in the cruiser on the way in. Detective Samen told me that she had told him about several hold-ups and who had committed these hold-ups, and I sat down with her and I started talking to her. And she told me that Wansel Cooper, George Cooper, Vernon Cooper, a James Thomas, a Josh Hart, and she went on to name seven or eight other fellows were all involved in a series of armed hold-ups in the District of Columbia.

Q. Did she mention the places involved? A. At this time I said to her, Well, what particular hold-ups are you talking about? And she said that she would tell us this information. So she proceeded to tell us that these subjects -- and she named the subjects in each particular job; there was around 15 or 16 armed hold-ups altogether -- had committed certain hold-ups. She stated that this subject had held up the market at 600 F Street, Northeast --

Q. When you say this subject you mean the defendant, Vernon Cooper? A. I mean Vernon Cooper. And he was with several other people when he did it and she mentioned their names. She told us that he had committed the hold-up at the Hot Shoppe at 4th and Florida

12 Avenue, Northeast, where the victim was shot at. She told us that this subject and several other subjects had committed the armed hold-up at Binder's liquor store, where the victim was shot in the jaw.

Q. As a result of this information and other information which this informant imparted to you what, if anything, did you do? A. Well, we went back immediately and pulled photographs of these subjects and we found -- we pulled all these photographs that she had given us names of, laid them down in front of her with just faces up and had her point out which is the subject she was talking about. She identified a photograph of Vernon as being the Vernon she talked about, and so on down the line. She identified each subject by looking at his photograph as the subject she just told us had committed these various robberies.

Q. Now, sir, were you able to compare the description of the

culprits given to you by the various victims of these armed robberies with the descriptions known to you as a result of the photographs?

A. Yes, sir.

Q. Did the descriptions match? A. In many instances, yes, they did, sir.

Q. Now, as a result of --

13 THE COURT: When you say in many instances, did any of them match this particular defendant?

THE WITNESS: Oh, yes, sir.

BY MR. HANTMAN:

Q. Was there anything particularly significant with respect to this defendant? A. This defendant had a scar about three inches long running down the side of his face, Your Honor, and in one particular hold-up one of the victims stated the subject has a scar about three inches long running down the side of his face. Of course, that was very visible in his photograph.

Q. After having identified the various perpetrators of these armed hold-ups by photograph and your comparison of the descriptions given by the victims, sir, was there anything else that the informant did or requested of you? A. Well, she said, If this isn't enough, if you don't believe this, let me call him and you can listen in while I talk to him on the telephone. So I said, All right. So she dialed a phone number -- and I have the phone number here, 234-2389 -- and she said it was listed to Vernon Cooper at 1029 Lamont Street, Northwest.

Q. Did you check the listing of this phone number? A. The phone was busy. This was at approximately ten after two or so, a few minutes before, a few minutes after. She called on the telephone and the phone 14 was busy. So, I told her to hang up the phone and wait a few minutes.

In the meantime, I went over to the cross-directory that we keep in the Robbery Squad and checked the address 1029 Lamont Street, Northwest, and that address 1029 Lamont Street was listed to Vernon Cooper and the phone number was 234-2389.

Q. All right. Now, did there come a time when you were able to make contact at this particular phone number? A. Yes, sir, there was.

Q. Who dialed the number? A. At 2:26 I dialed the phone number 234-2389. I was on one extension, Detective Samen was on another extension, and this Naomi Quinones -- who they call Dump; that is her nickname -- was talking on the telephone. The phone rang twice and then a young lady answered the phone.

Q. Tell His Honor as best you recall the details of the conversation you overheard between the informant and the party at the other end. A. Well, the first person that answered the phone, called Hazel, and we later found out to be Hazel Cooper, a sister of the defendant, Vernon Cooper; and she asked for George, who is George Cooper, her boy friend, who is charged in another particular case. In fact, he is charged in this

15 same case. And she asked to talk to George, and Hazel told her that George had left, he was going to North Carolina to a funeral, they were all leaving for a funeral in North Carolina. And she asked if Vernon was there and Hazel said, or this voice said, Yes, and she hollared up, Vernon. A few minutes later a man got on the phone and Naomi said, Vernon? He said, Yeah. She says, Why did you let George mess with me? And he told her, he said, Well, George mess with you, ain't none of my business. And then she said something about Shirley had said that Jimmy told her that she had let George mess over her, or something of that nature. And at this time Vernon said, Well, here, you can talk to Jimmy.

Now, this Jimmy that he put on the phone was James B. Thomas, who we knew was wanted for violation of parole and who was also wanted on a warrant for a housebreaking and attempt safe job, and we had been looking for him for about a year.

Q. Did the informant say anything about the various offenses that you were interested in? A. At this particular time?

Q. When she talked to Vernon. A. Not the first time. She talked to Jimmy a few minutes.

Q. All right, after she talked to Jimmy? A. And they had some

words. Jimmy told her that he hadn't let so-and-so mess with her.

16 Then Vernon got back on the phone and at this time she told Vernon that unless George came back to her she was going to tell the police about the hold-ups that they were involved in, and she even told him on the phone she knew that he and Jimmy and George had shot the man in the liquor store on Florida Avenue, Northeast.

Q. Did Vernon say anything in response to this? A. Oh, yes, Vernon said a whole lot on the phone. He became -- raised his voice and began using all kinds of profanity, calling her all kinds of filthy names and told her that if she ever told the police that he had committed these hold-ups, that he would kill her, and he also told her, How you know so much about these hold-ups unless you was driving the car? And at this time she said, George told me that you pulled all these hold-ups. And again he warned her that if she ever told the police that they had committed these hold ups he would kill her or see that she was killed, and with that he hung up the phone.

Q. Now, did you learn any other additional information from the informant subsequent to the phone conversation? A. Yes. When she hung up the phone she turned around and she smiled and she said, If that isn't enough, part of the stuff they used in the I.C. Furniture Store is
17 either in his room or in the basement, and he and Jimmy both got guns, be careful.

Q. Now, did she tell you anything about the plans of these people at the house? A. Oh, yes. I asked her, after we had hung up - she had hung up talking on the phone -- what Hazel had meant when they mentioned going to a funeral to North Carolina, and she said that they were all leaving that day to attend a funeral in Faiston, North Carolina, that a relation of theirs -- I believe it was Faiston, North Carolina, F-a-i-s-o-n, or something of that nature -- and they were all ready to leave that day to attend this funeral in North Carolina.

Q. Did she indicate whether they intended to return promptly or not? A. I didn't ask her that. I started taking action as soon as I heard that.

Q. You say you started taking action. As a result of all this information that was available to you what did you do? A. I got three cars manned with nine detectives.

Q. What time was this? A. We left the office at around 2:35 in the afternoon.

Q. This was on a Sunday? A. This was on a Sunday.

18 THE COURT: On a Sunday?

THE WITNESS: On a Sunday afternoon, yes, sir.

BY MR. HANTMAN:

Q. And what did you do then? A. Well, we knew we couldn't get a warrant because it was Sunday and we had to work fast. We were running close on time. We didn't want these subjects to leave town. They committed serious robberies, had shot people. So we got three cars together. It was nine detectives. We met up about two blocks from where he lived. We had two uniformed cars meet us. So we went up there all told with about 12 or 13 policemen because they were such bad characters.

Q. And you are speaking now of the address 1029 Lamont Street?

A. That's right, sir.

Q. When you got to the premises what, if anything, did you do?

A. Well, we stationed men in the front and in the back and outside.

Q. Were you permitted to enter the premises? A. I knocked on the door and I was admitted into the premises by a 14 year old colored girl who is Vernon Cooper's sister.

19 Q. After gaining entry into the premises what did you do? A. Asked the girl where Vernon and the others were and she pointed upstairs with her eyes.

Q. Did you go up there? A. Yes, sir. Several officers went downstairs and Detective Samen and I went upstairs to the second or third floor.

Q. When you went upstairs did you go to the defendant Vernon Cooper's room? A. Yes, I did.

Q. Was the defendant there? A. Yes, sir, he was.

Q. Did you place him under arrest at that time? A. Yes sir, I did.

Q. What was he doing when you first saw him? A. He was laying across the bed.

Q. After you placed the defendant under arrest did you search his person and the immediate vicinity? A. Well, he was sitting there in a pair of shorts, so we told him to get dressed. While he was getting dressed we searched the room he was in for this gun she said he had and always carried and for these other things.

Q. Can you tell His Honor what property, if any, you seized in this
20 room? A. Well, we recovered ammunition for .22 caliber rounds, .45 caliber, Smith & Wesson .38 ammunition, Winchester 3220 ammunition, more .32 ammunition, and we recovered a gun that was later -- we later discovered by serial number was stolen in this particular case from a reverend up on --

* * * *

THE WITNESS: It was a small arm, a pistol, Your Honor. That was in his top drawer, to the right, and that was recovered by Detective Samen.

We recovered in his closet a jar of pennies, which the informer had told us was stolen from the epilepsy foundation; they had a safe job down there. And in this jar of pennies was some foreign coins that also came out of this hold-up of this minister.

BY MR. HANTMAN:

Q. Were there any sun glasses seized? A. There were sun glasses and other articles of clothing worn in several of these cases.

This was all in his room while he was getting dressed, Your Honor, on Sunday, May 20th.

21

* * * *

CROSS EXAMINATION

BY MR. RITZ:

* * * *

25 Q. You are basing your information on what you received from Naomi Quinones, is that correct? A. Not alone, sir.

* * * *

26 Q. What other evidence did you have, Officer, besides what you learned from Naomi Quinones? A. I had the descriptions matching with the descriptions of the suspects in several -- many cases. I had --

* * * *

Q. Now, how well did you know Naomi Quinones prior to the date she gave you this information? A. I had never seen her, never spoken to her before.

Q. How well do you know her now? A. Well, I stayed in the same room with her on and off for several days.

27 Q. Did you know that she was a narcotic user? A. No.

Q. Did you know that she was an alcoholic? A. Oh, yes, she drinks.

Q. Did you give her anything to drink on the day you had her down there? A. The day I had her down there she had a drink, yes, sir. She brought her own bottle. When the police brought her in she had a half-pint of whiskey with her.

* * * *

THE WITNESS: She had nothing to drink before the arrest, no. After the arrest is when we came back in the office and she was shaking
28 because she was scared. She said, They will kill me, let me take a drink. So we let her take a drink. I probably would have drank myself, under those circumstances. She was shaking like a leaf.

* * * *

29 THE COURT: I am going to hold that under the circumstances
30 there was no necessity for getting a warrant. In the first place, the courts have held recently that the mere fact that there is an opportunity to get a warrant does not deprive the police of the right to arrest without a warrant if they have probable cause.

Moreover, I think if they had stopped to look around for a magistrate on a Sunday afternoon, they probably could have found one if they phoned around to this judge and that judge and if they went up to see him and typed out an application. All that might have consumed a couple of hours and if by that time the defendant was no longer in his room I would

say that the police were derelict in their duty in not making the arrest immediately.

You know, the police are confronted with practical problems. If some of these points that are raised on these motions were sustained, then we might as well abolish the police force.

* * * *

32

NAOMI QUINONES

called as a witness by the Defendant, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RITZ:

* * * *

Q. Do you know the defendant in this case, Vernon Cooper?

A. Yes.

Q. Do you know his brother, George? A. Yes.

33 Q. Miss Quinones, do you recall the day on which you went to the police or called the police with the purpose of giving information about certain robberies? A. I remember a little about it.

* * * *

Q. Well, do you recall on what day of the week this was that you called the police A. Sunday.

* * * *

Q. Morning, afternoon or evening? A. Afternoon.

* * * *

34 Q. Miss Quinones, had you had anything to drink of an alcoholic nature? A. Yes.

Q. A considerable amount or just a little? A. A lot.

Q. Were you drunk? A. Yes.

Q. At the time you called the police? A. Yes.

Q. Do you recall anything you told the police? A. I recall just about everything, but I don't know.

Q. You don't know? A. Not exactly.

Q. Would you tell us what you recall telling the police? A. I -

THE COURT: The Reporter can't hear you. Would you speak a little louder?

MR. RITZ: Maybe she is ill, Your Honor.

35 THE WITNESS: No, I am not.

I know who's been holding up the whiskey stores and different robberies around Washington.

BY MR. RITZ:

Q. You told this to the police. Did you know at the time who was holding up the stores? A. No, I didn't know.

Q. You didn't know.

THE COURT: I want to have the answer read.

(The last answer was read by the Reporter.)

THE COURT: The Court is impressed with the idea that she apparently is in fear and trembling. She sees the defendant sitting at the counsel table.

You know, it isn't what she knew, but what information she gave to the police. That is what the Court has to determine on the presence or existence of probable cause.

MR. RITZ: Your Honor --

THE COURT: I am not going to try the guilt or innocence of the defendant on this motion. He may be innocent, for all I know. All I have to determine is whether the police had enough information not only to justify an arrest -- and I think, from the examination of Officer Blancato, not only did they have enough information to justify an arrest, they had enough information to require an arrest; and if they failed to arrest and

36 the defendant became a fugitive, I think they would have been answerable for lack of diligence.

MR. RITZ: Your Honor, I think it is required that the informant be reliable.

THE COURT: Yes.

* * * *

38

BY MR. RITZ:

Q. Miss Quinones, are you in fear of any physical harm coming to you from Vernon Cooper or George Cooper or any of the other defendants? A. No, I am not.

*

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*

Q. You had a phone conversation from Police Headquarters with Vernon on this particular Sunday, did you not? A. Yes.

Q. What did Vernon say over the telephone? A. Something about if I told, he'd kill me.

*

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40

THE COURT: I don't think I need hear the Government.

Probable cause for the arrest is amply established. In fact, the Court is of the opinion that the probable cause was so strong that the police would have been derelict in their duty if they had not made the arrest and made it just as promptly as they could.

The motion is denied.

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Monday, January 7, 1963

[1] The above-entitled cause came on for hearing before THE HONORABLE HENRY A. SCHWEINHAUT, United States District Judge, at 10:15 a.m.

* * * *

[33] WILLIAM R. BURRUSS

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANTMAN:

* * * *

Q. * * * * Give us your full name and your address. A. William R. Burruss, 1300 Ingraham Street, Northwest.

Q. Will you try speaking into the microphone. Your occupation, sir? A. Minister.

Q. You are a minister of what church, sir? A. New St. Paul Baptist Church.

[34] Q. Where is the church located, sir? A. 1300 Ingraham Street, Northwest.

Q. Is that the same place where you reside? A. Same address, yes.

Q. What is the relationship of the church to your residence? A. I live up over the church.

Q. I see. Is that here in the District of Columbia? A. Yes, in the District.

Q. Do you have any other people living at the house where you reside besides your own family? A. Yes, sir, in the basement.

Q. Who lives there? A. Junior Buford.

Q. And his family? A. Yes.

Q. Now, Reverend, directing your attention to March 10, 1962, somewhere around 5:00 p.m., do you recall where you were on that date and at or about that time, sir? A. I do.

Q. Tell us exactly what occurred. A. We were at home and we

were having dinner, my wife and my children and then certain ring-- about 5:00 o'clock someone ring the doorbell and my wife went down and answered the door.

- [35] Q. Now, when your wife answered the door, what was the next thing you heard? A. My wife screamed, "Lord, have mercy."

Q. What did you do when you heard your wife scream, "Lord, have mercy?" A. I ran to the top of the steps and started down the steps where she was.

* * * *

Q. Did you go down the steps at all? A. I made about, I say, about two steps down.

Q. And what happened at that point, sir? A. About that moment someone came to the door upstairs.

Q. How many people, sir? A. One and then another followed after, two.

Q. Did you say anything to them or did they say anything to you? A. Yes. I asked the gentleman that come up the steps, I says, "What's the matter?"

He say, "You will find out what's the matter. You know what's the matter."

And by that time, he rushed to the top of the steps and when he got to the top of the steps, I pushed him--went to push him back down the [36] steps and about that time this other one rushed up behind him.

Q. Was there anything unusual about their dress that you recall on that day? A. Yes, the first one had on a dark mask across his face, across here (indicating).

Q. How about the second man? A. Yes, he came up and he had a mask also.

Q. Were they armed or unarmed? A. They were armed.

THE COURT: Each of them?

THE WITNESS: Yes.

BY MR. HANTMAN:

Q. With what? A. With a gun.

Q. Now, do you see any of the people who were in your place on that date and at this time, sir, in the courtroom here today? A. Yes, I do.

Q. Would you point them out to the Court and the jury, please.

A. This young gentlemen over here to my left.

* * * *

[37] Q. Will you point directly to the people? A. This gentleman first one on the steps.

Q. All right.

THE COURT: For the record, that is Vernon Cooper.

MR. HANTMAN: Yes, Your Honor.

THE WITNESS: This young gentlemen here was the second one who came up the steps.

THE COURT: For the record, that is George Cooper.

* * * *

[45] MR. HANTMAN: If Your Honor please, at this time we would like to have marked as Government's Exhibit No. 1, a 7.65 Eibar automatic revolver. They tell me it's been checked. Would you like to have the marshal look at it before I hand it to the witness, Your Honor?

* * * *

BY MR. HANTMAN:

Q. Reverend, would you look at this exhibit,

(Gun marked as Government's
Exhibit No. 1 for identification.)

[46] Government's Exhibit No. 1 for identification, and tell me if you can identify that weapon? A. Yes, this is the gun.

Q. Is that the gun you had in your home? A. That's right.

Q. At the time it was entered by these defendants, among others?

A. Yes, this is the gun.

Q. All right. Now, was there any other property taken from you or your premises at the same time this gun was taken? A. Yes, there was. There was some pennies in a jar and some foreign coins also in there.

MR. HANTMAN: If Your Honor please, I have a brown envelope

here with five foreign coins in it which I would like to have marked Government's Exhibit No. 2 for identification.

* * * *

BY MR. HANTMAN:

Q. Now, let me show you this envelope, Reverend, which the Clerk has marked Government's Exhibit 2 for identification, and I will ask you to examine the contents and tell us if you can recognize or identify it? A. Yes, sir, these are the coins.

* * * *

[48] Q. When George Cooper came into the room, did he have any sort of mask on his face? A. Yes, both of them had masks. Both of these [49] gentlemen were masked.

* * * *

[50] Q. How long would you estimate, Reverend, that the two defendants, Vernon Cooper and George Cooper, were in your residence on this occasion? A. I say approximately about 35 minutes, approximately 35 minutes, I should say.

Q. Were you able to get a good look at these defendants while they were there? A. Yes, because when they came stepped up and me trying to talk to them and square them up, I got a very good look at them.

* * * *

[53] CROSS-EXAMINATION

BY MR. RITZ:

* * * *

[58] Q. Did you ever have an opportunity to attempt to identify any of the parties who took part in this robbery? A. What you mean, opportunity?

Q. From the time you were robbed until today? A. Yes.

Q. Have you been called to the police station at any time to identify them? A. No, I seen photos of these young gentlemen.

MR. WILLIAMS: If Your Honor please, I object. May we approach [59] the Bench, please, Your Honor?

THE COURT: You may.

(Whereupon counsel approached the Bench and the following proceedings were held:)

MR. WILLIAMS: Your Honor, I can't go for that. I ask for severance at this point.

THE COURT: I will not grant severance because there is nothing in there to indicate when and under what circumstances the photographs were taken. They very well could have been taken after the arrest of these two.

* * * *

[75] THE COURT: Mr. Williams.

BY MR. WILLIAMS:

* * * *

[95] Q. Then you paid attention to him--my question to you now, how was that second person dressed at that time? A. Well, I don't recall. I told you before I don't recall how he was dressed.

* * * *

[102] THE COURT: No, here is what he wants to know. Did you ever pick George Cooper out of a line-up?

THE WITNESS: No.

BY MR. WILLIAMS:

Q. That is my answer. Did you ever see George Cooper in any line-up? A. Not that I knows of.

Q. What do you mean, not that you knows of? A. Well, I mean, he could have been in the line and I didn't recognize him. He could have been there. If he was I didn't recognize him. Is that very clear?

* * * *

[116] BY MR. HANTMAN:

* * * *

Q. Is there any doubt in your mind that the two men who came up to your place on March 10, 1962 at 5:00 p.m., two of the four men, and bound you and robbed you and your wife were the defendants Vernon

[117] Cooper and George Cooper? A. No doubt in mind they are the two.

* * * *

JULIA M. BURRUSS

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANTMAN:

* * * *

Q. Would you mind leaning forward and speaking directly into that microphone. A. Julia M. Burruss, 1300 Ingraham Street, Northwest.

Q. You are the wife of the Reverend Burruss the preceding witness in this case? A. Yes.

[118] Q. Mrs. Burruss, directing your attention to March 10, 1962, about 5:00 o'clock in the evening, do you recall where you were on that date at or about that time? A. Yes, I was home.

Q. At 1300 Ingraham Street, Northwest? A. Yes.

Q. That is here in the District of Columbia? A. Yes.

Q. Did anything unusual occur or happen to you on that date and at that time while you were at home? A. Yes.

Q. All right. Tell us what occurred. A. Well, we was having dinner and the doorbell rang and I went down to answer the door and four men rushed in with guns.

THE COURT: I did not hear you. You answered the door and what?

THE WITNESS: Some men forced their way in.

BY MR. HANTMAN:

Q. How many men? A. Well, two men and two--well, four in all.

Q. What did you say the moment you opened the door? A. Well, as I attempted to open the door, they forced it open.

[119] Q. You say they forced it open? A. Yes.

Q. Now, did you say anything to the men or did they say anything to you at this point? A. Well, I hollered, screamed and hollered, "Lord, have mercy on me."

Q. Was there anything unusual about the men when you first saw them? A. Well, the one--I remember one with scars on his face, pimples and scars.

Q. Scars on his face? A. Yes.

* * * *

Q. What did he have with him? A. Well, he had a gun with him.

Q. Where was the gun? A. In his hand.

* * * *

THE WITNESS: Two that I could really recognize at the time.

[120] THE COURT: You mean got a good look at them?

THE WITNESS: That's right.

THE COURT: They both had guns or just one of them?

THE WITNESS: They both.

* * * *

BY MR. HANTMAN:

Q. Did they have any article of clothing on their faces? A. Yes.

Q. What was that? A. Well, this--had his coat over and seemed like--

THE COURT: One of them had a coat over his--you are gesturing and the record cannot know what you are indicating.

One of them had his coat over his face, apparently?

THE WITNESS: Yes.

THE COURT: Across his nose, is that right?

THE WITNESS: Yes.

BY MR. HANTMAN:

Q. How about the other one, did he have anything? A. He had something over his face.

Q. He had what?

[121] THE COURT: Something over--

THE WITNESS: Over his face.

BY MR. HANTMAN:

Q. Something over his face?

THE COURT: What was it, do you know?

THE WITNESS: Well, at the time, it was a handkerchief, a dark handkerchief.

THE COURT: Dark handkerchief. Did it cover his face completely?

THE WITNESS: Not completely.

THE COURT: Up to where?

THE WITNESS: (Indicating)

THE COURT: Down--

BY MR. HANTMAN:

Q. Below his nose?

THE COURT: Below his nose?

BY MR. HANTMAN:

Q. Covering-- A. Covering around his nose like.

* * * *

[127] Q. Now, do you see the two men anywhere in the courtroom that were in your apartment on March 10, 1962? A. I see one.

Q. Which one? A. The one to my left with the dark clothes on.

THE COURT: At the table there?

THE WITNESS: The table.

THE COURT: All right. That is Vernon Cooper.

* * * *

[129] Q. *** A. I started to say, I see one that do resemble.

THE COURT: Resembles whom?

THE WITNESS: The one that I saw--it was such a quick look, I mean, they made me hold my head down.

THE COURT: Where did you see this person?

THE WITNESS: Upstairs.

THE COURT: Upstairs?

THE WITNESS: That's right.

THE COURT: In the room where your husband was tied up?

THE WITNESS: Yes.

THE COURT: You say you see a person in the courtroom who resembles such a man?

THE WITNESS: Yes, sir.

THE COURT: Point him out to us.

THE WITNESS: (Indicating)

THE COURT: There are four men sitting at that table.

THE WITNESS: The one with the blue.

THE COURT: All right. That is the defendant George Cooper.

* * * *

[135] BY MR. HANTMAN:

Q. I want to show you an envelope which contains some coins which the Clerk has marked Government's Exhibit 2 for identification and ask you to look at it and tell us if you can identify them? A. Yes.

Q. Where have you seen those coins before? A. Well, those are the ones that were in my possession.

* * * *

[146] BY MR. RITZ:

Q. When you got upstairs to your husband, how many men were in your apartment? A. With the one with me, three.

Q. Three including the one? A. Yes.

Q. Now, of those how many men had masks? A. How many had masks?

Q. How many were wearing masks or some type of covering over their face? A. Well, I couldn't -- they wouldn't let me look directly up. I had to keep my face down.

* * * *

[150] Q. Now, when the police came to the apartment, did you give them a description of the man who had no mask on his face? A. Yes.

Q. What did you tell them? A. I told them he had scars on his face.

* * * *

[155] BY MR. WILLIAMS:

Q. Mrs. Burruss, I think you stated that when you went downstairs to the door you saw all four men, is that correct? A. I can't hear you.

[156] Q. When you went downstairs to the door, to answer the door, all four men rushed by you, four men rushed by you, is that correct?

A. Yes.

* * * *

[163] Q. Thank you. What I want to know now is simply this, what description did you give the officer when he came to your house with regard to the second person that was upstairs with your husband?

A. I told the second person, man sitting there, had rough complexion, with a scar on his face.

Q. Who are you talking about? A. I pointed to him.

Q. Oh, oh. Did you give a description of the other person, if any? A. I didn't give the description to the other person to the police, no.

Q. Mrs. Burruss, as a matter of fact, you can't say that George was the person-- A. I didn't say that he was.

* * * *

[170] CHARLES C. SAMEN

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANTMAN:

Q. Would you give us your full name and your assignment, please?

A. Detective Charles C. Samen, Metropolitan Police Department, as-
[171] signed to the Robbery Squad.

* * * *

Q. Detective Samen, directing your attention to May 20, 1962, did you have occasion to have a conversation with an individual by the name of Naomi Quinones, Q-u-i-n-o-n-e-s? A. I did, sir.

* * * *

[178] Q. Did you have a conversation with Naomi Quinones on May 20, 1962? A. I did, sir.

Q. As a result of the conversation you had with Naomi Quinones, what, if anything, did you do? A. I responded to 1029 Lamont Street, Northwest.

* * * *

Q. Whose residence did you understand 1029 Lamont Street to be?

A. The residence of Vernon Cooper, Wenzell Cooper, Pearl Cooper, the mother of Vernon and Wenzell Cooper.

Q. Were you admitted to the premises on this occasion, sir?

A. We were, sir.

Q. As a result of being admitted to the premises, what, if anything, did you do? A. I went to the second floor front bedroom.

[179] Q. Whose room was that? A. Vernon Cooper's room.

* * * *

Q. Who was in there? A. Vernon Cooper.

* * * *

Q. Did you place the defendant Vernon Cooper under arrest at that time as a result of the information you had received from Naomi Quinones?

A. We did, sir.

[180] Q. Subsequent to placing the defendant Vernon Cooper under arrest, did you undertake to search his person or his immediate surroundings?

A. Yes, we did.

Q. Did you find anything at that time, sir?

* * * *

Q. Did you find anything as related to this case at that time?

A. Yes, I did, sir.

* * * *

Q. * * * A. I found a 7.65 Spanish-type revolver with a serial number--

* * * *

[181] Q. Now, I show you this exhibit which the Clerk has marked Government's Exhibit 1 for identification and ask you if you can identify that, sir? A. Yes, sir.

Q. When and where did you first see that particular weapon?

A. May 20, on a Sunday afternoon, in the top right dresser drawer of Vernon Cooper's room.

* * * *

[194] THE COURT: Anything, Mr. Williams?

MR. WILLIAMS: I have no questions of him, if Your Honor please.

* * * *

[196]

Tuesday, January 8, 1963

* * * *

[198] Whereupon

LOUIS BLANCATA, JR.

was called as a witness by the Government, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANTMAN:

* * * *

[209] Q. Were you able to find George Cooper anywhere in the residence at 1029 Lamont Street, Northwest, on the date we have been discussing--

A. No.

Q. May 20. You did not? A. No, sir.

* * * *

[214] Q. Did there come a time subsequent to that date that you had occasion to see the defendant George Cooper? A. Yes, sir, yes, sir.

Q. When and where was that? A. That was on June 20, 1962, at the United States Commissioner's office in the Eastern District of New York. I believe his name is Abruzzi - A-b-r-u-z-z-i, I believe he spells it.

THE COURT: Is he the Commissioner?

[215] THE WITNESS: He is the United States Commissioner for the Eastern District of New York.

THE COURT: Brooklyn?

THE WITNESS: Brooklyn, yes, sir.

BY MR. HANTMAN:

Q. At the time you saw the defendant George Cooper in the state of New York, had he been arraigned up there before the Commissioner?

A. He was--they were getting ready to arraign him as myself and an agent from the FBI walked into the Commissioner's office.

Q. Did you have occasion to talk to the defendant George Cooper?

A. Not at that time, no, sir.

Q. When did you--well, when, if at all, did you talk with him?

A. Well, after he was arraigned, I spoke to him back in the cell block a few moments and then we had other matters to take care of and then I spoke to him again on June 21, from 11:50 a.m. until 1:50 p.m. at the Federal House of Detention at 427 West Street, New York City.

* * * *

[216] Q. Had the defendant been arraigned at that time? A. Yes, sir, I was present when he was arraigned.

Q. When was he arraigned? A. He was arraigned at 3:00 o'clock --3:30 p.m. on June 20, 1962, which was a Wednesday.

Q. You talked to him on June 21, the next day? A. Yes, sir.

* * * *

[217] Q. All right. Now, did you discuss with the defendant George Cooper where he was on March 10, 1962? A. Yes, sir.

Q. What, if anything, did he say? A. Denied any implication in any robbery.

Q. Did you ask--

THE COURT: The question asked you was did you ask him where he was on March 10. Now, your answer is not quite responsive to that. Did he tell you where he was?

THE WITNESS: No, sir.

BY MR. HANTMAN:

Q. Did you ask him where he was? A. Yes, sir.

Q. Now, did you ask him what he was doing in New York?

A. Yes, sir.

Q. What, if anything, did he say? A. He told me he went to New York because we were getting too close to him and he wanted to get away and he said if the FBI had gotten there two hours later he would have

[218] gone to Florida and they would have missed him.

* * * *

Q. You did receive a call from an informer? A. Yes, sir.

Q. As a result of the call you received, what, if anything, did you do? A. Went to 5458 B Street, Southeast, the home of Naomi

[219] Quinones.

Q. What was your purpose in going there? A. Try to find George Cooper.

Q. Did you find George Cooper there then? A. No, sir.

THE COURT: What was your answer?

THE WITNESS: No, sir.

BY MR. HANTMAN:

Q. Did you talk to Naomi Quinones? A. Talked to Naomi and to her sister.

Q. Now, sir, when you were in New York talking to George Cooper, did you discuss the fact that you were looking for him on June 7, 1962?

A. Yes, sir.

Q. What, if anything, did you say to him in this connection and what reply did he make to you, if any? A. I told him that we had turned up Naomi's house for him on June 7 and he started laughing. He said he knew that; when we came in with our guns in our hands, he was upstairs in the bedroom and he said when Naomi came down and she told us that he wasn't there, that he was upstairs in the bedroom. He said he didn't know whether to come on down because we didn't go up.

Q. Were you able to in any way corroborate his story or statements to you?

[220] A. Well, he told me that the day she came downstairs that she wasn't wearing anything but a pair of underpants and that's right and he told me that I was wearing a gray suit and I was, because I ripped the suit the same day, I remember.

* * * *

[255] MR. WILLIAMS: Your Honor, it is time to make motions.

THE COURT: It is, if you want to make them.

* * * *

[259] MR. WILLIAMS: I make a motion for judgment of acquittal on the first, second and third counts in addition, as to George Cooper, since as to George Cooper there is too much speculation as to his identification.

THE COURT: I think a question of fact arises, but there is the absolute identification of him by Mr. Burruss. Whether that is a good

identification, sufficient, I mean, identification, is for the jury to say. If he was wearing a mask, and it was not removed at any time, he still could have seen, the jury may decide, enough from his eyes, forehead, and hair to identify him.

* * * *

[260] THE COURT: * * * * So that is a question of fact and I deny the motion as to George on all four counts.

* * * *

[342] THE COURT: Now, ladies and gentlemen, the evidence in the case has been concluded. * * * *

* * * *

[344] MR. WILLIAMS: I will renew the motion now for a directed verdict in the case as to each and every count in the indictment as to George Cooper.

THE COURT: I deny it.

MR. RITZ: For the record, I will make a motion for a directed verdict as to Vernon Cooper.

THE COURT: Yes. I will deny that.

* * * *

[412] THE COURT: Put the jury in the box.

THE DEPUTY MARSHAL: Yes, Your Honor.

(Whereupon, the jury returned to the courtroom.)

THE COURT: Ladies and gentlemen, I have a note from you, which reads as follows:

"Was George positively identified by anyone? If so, by whom?"

I cannot answer that question, because to do so would be for me to characterize or to interpret or to comment upon the evidence in the case.

* * * *

[Filed February 25, 1963]

JUDGMENT AND COMMITMENT

[Vernon Cooper]

On this 15th day of February, 1963 came the attorney for the government and the defendant appeared in person and by counsel, Michael Ritz, Jr.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of Housebreaking and Robbery as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Twenty (20) Months to Five (5) Years, said sentence to take effect at the expiration of the sentence imposed in Criminal Case No. 524-62.

It Is Ordered that the Clerk Deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ H. A. Schweinhaut
United States District Judge.

[Filed February 25, 1963]

JUDGMENT AND COMMITMENT

[George W. Cooper]

On this 15th day of February, 1963 came the attorney for the government and the defendant appeared in person and by counsel Wesley S. Williams, Esquire.

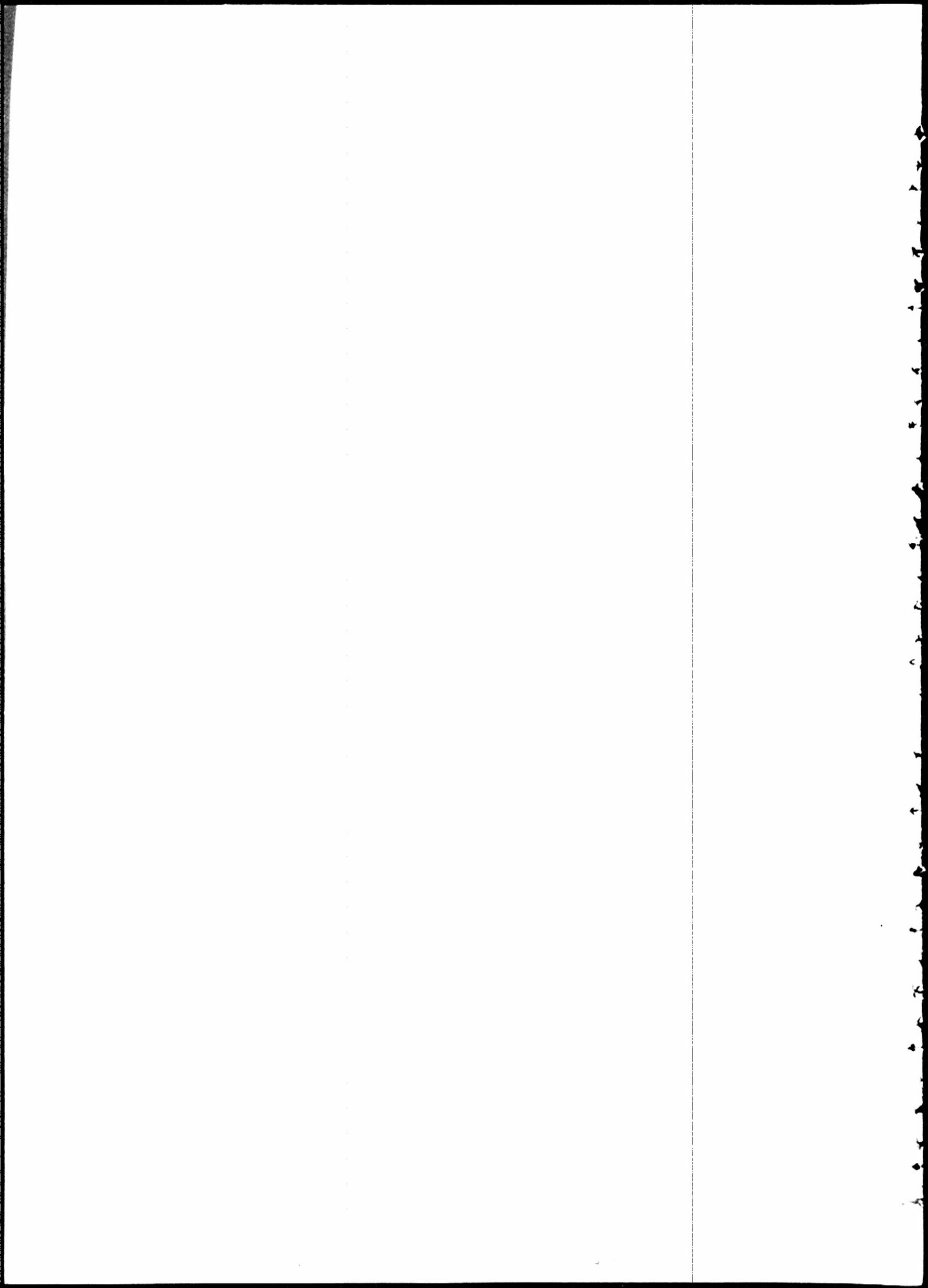
It is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Housebreaking and Robbery as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years to Ten (10) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ H. A. Schweinhaut
United States District Judge.



181

BRIEF FOR APPELLANTS

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 17,682 and 17,683

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 9 1963

VERNON COOPER

and

GEORGE COOPER,

Appellants,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM A JUDGMENT AND ORDER OF THE
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

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STATEMENT OF QUESTIONS PRESENTED

1. The appellant, Vernon Cooper, was arrested in his home by police officers who had neither an arrest or search warrant. There was a search of the premises after the arrest and evidence seized during this search was introduced during the trial. A pre-trial motion to suppress this evidence was denied. Was this error?
2. Did the Government sustain its burden of producing credible evidence of the guilt of the appellant George Cooper when the record reveals that the two witnesses upon whose identification alone George Cooper's conviction must rest had no adequate opportunity to observe the person whom they testified was George Cooper?

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I. JURISDICTIONAL STATEMENT

This is an appeal in forma paucaria from judgments of conviction, entered by the United States District Court for the District of Columbia, for robbery. The indictment, plea, verdict and judgments are set forth in the Joint Appendix. Notice of appeal was duly filed.

This Court has jurisdiction of the appeal under 28 U.S.C. Sec. 1291 and 1292.

II. STATEMENT OF THE CASE

1. PRE-TRIAL MOTION TO SUPPRESS EVIDENCE UNLAWFULLY SEIZED

The appellant, Vernon Cooper, through his attorney, filed a timely motion to suppress evidence unlawfully seized at the time of Vernon Cooper's arrest (Tr. 3). At the hearing of this motion the police officers who entered Vernon Cooper's home and arrested him without a warrant testified. After hearing the motion to suppress was denied (Tr. 2).

2. TRIAL BY JURY:

Witnesses testified for the prosecution that masked men entered the premises where the witnesses lived and that the masked men were armed, and that certain articles were stolen at gun point. Two of the witnesses identified the two appellants, Vernon Cooper and George Cooper, as two of the masked robbers. The first of these witnesses, reverend Burress, stated that Vernon Cooper's mask slipped and he was able to see a scar on his face (Tr. 5). Reverend Burress also testified that he could identify George Cooper although he at no time stated that George Cooper's mask slipped. Evidence seized in the home of Vernon Cooper was introduced into evidence. George Cooper's attorney made motions for a severance and for a judgment of acquittal which motions were denied. The jury returned a verdict of guilty against each appellant. Thereafter the appellants were sentenced.

III

STATUTES, CONSTITUTIONAL PROVISIONS,
AND RULES INVOLVED

The Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a present-
ment or indictment of a Grand Jury, except in cases
arising in the land or naval forces, or in the
Militia, when in actual service in time of War or
public danger; nor shall any person be subject for
the same offense to be twice put in jeopardy of
life or limb; nor shall be compelled in any crimi-
nal case to be a witness against himself, nor be
deprived of life, liberty, or property, without
due process of law; nor shall private property be
taken for public use, without just compensation.

Rule 41, Federal Rules of Criminal Procedure, in pertinent part:

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for the use as evidence anything so obtained on the ground that (1) The property was illegally seized without warrant or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

District of Columbia Code (1961 Ed.), Sec. 22-2901 (robbery):

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

IV. STATEMENT OF POINTS

1. The Trial Court erred in denying George Cooper's motions for severance and for judgment of acquittal.
2. The evidence of identification concerning George Cooper was insufficient to warrant submission to the jury.
3. The Trial Court erred in restricting the examination of witnesses by George Cooper's attorney.
4. The Trial Court erred in denying Vernon Cooper's Motion to Suppress.

V. SUMMARY OF ARGUMENT

A. The appellant Vernon Cooper was in his home when police officers entered without his consent and arrested him and searched his premises (S.A. 11).

At the hearing of the motion to suppress the evidence unlawfully seized and later introduced at trial, it was shown that:

- (1) the police had neither an arrest or search warrant (Ex. 3),
- (2) that the police relied on the tip of an informer who was unknown to the police until this case, and (3) that the police listened in to a telephone call placed by the informer to Vernon Cooper (Ex. 14).

The motion to suppress the evidence unlawfully seized was denied. This, appellant Vernon Cooper contends, was error because the police did not have probable cause to enter his home and arrest him and seize evidence.

B. At the trial two witnesses testified that they were robbed and that the robbers had masks on (Ex. 25). The conviction of George Cooper stands on the identification of him by these two witnesses. Both of these witnesses agree that the party who they identified as George Cooper at trial wore a mask during the entire time that they had him under observation. At trial counsel for George Cooper moved the trial judge for an acquittal based upon the insufficient evidence of guilt presented by the Government (Ex. 35). It was error to overrule this motion.

VI. ARGUMENT

(A) THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS

The protection of the Fourth Amendment against unreasonable searches and seizures extends to the innocent and guilty alike and "marks the right of privacy as one of the unique values of our civilization and, with few exceptions, stays the hands of the police unless they have a search warrant issued by a magistrate on probable cause supported by oath or affirmation". McDonald v. United States, 335 U.S. at 453.

The Government claims that the search and seizure were lawful on the ground that they were incident to a lawful arrest. The arrest was made without a warrant of arrest, and may be justified in this case only if made for a felony which the officers had probable cause to believe appellant Vernon Cooper committed. The officers' information came from an informer who had never given reliable information to the police on other occasions (Tr. 18). This was buttressed by an unreasonable interference with the right of privacy of Vernon Cooper in that the officers listened in on a telephone conversation between the informer and Vernon Cooper (Tr. 14).

But probable cause does not of course exist when the officer relies solely upon an informer whose information has not heretofore been relied upon or proved reliable (Cervantes v. U.S., 263 F.2d 800, 804; Cochran v. U.S., 291 F.2d 633; Wrightson v. United States, 222 F.2d 556).

The listening in to the telephone call placed by the informer to Vernon Cooper may also have been a breach of Vernon Cooper's rights. The Supreme Court stated in Silberman v. United States, 365 U.S. 505 at 511-512, 81 S.Ct. 679 at 683 (1961):

"The Fourth Amendment, and the personal rights which it secures, have a long history. At the very core stands the right of a man to retreat from his own home and there be free from unreasonable governmental intrusion. *Bentick v. Carrington*, 19 *Howell's State Trials* 1029, 1066; *Boyd v. United States*, 116 U.S. 616, 626-630, 6 S.Ct. 524, 530-532, 29 L.Ed. 746. This Court has never held that a federal officer may without warrant and without consent physically intrude into a man's office or home, there secretly observe or listen, and relate at the man's subsequent criminal trial what was seen and heard."

The telephone call was made to Vernon Cooper's home. Because the informer was not proven reliable and because the telephone call was in violation of Vernon Cooper's right of privacy, the arrest of Vernon Cooper and the search and seizure were invalid and the evidence seized should be suppressed.

(B) THE GOVERNMENT DID NOT SUSTAIN ITS BURDEN OF PRODUCING CREDIBLE EVIDENCE OF THE GUILT OF APPELLANT GEORGE COOPER

The entire case of the Government against George Cooper rests on the testimony of Reverend and Mrs. Burruas, that they can identify George Cooper as the masked man who entered their premises. There is no other evidence against George Cooper. To allow the jury to dispose of George Cooper's case based on evidence of this kind is to permit speculation concerning guilt or innocence. See Carley v. U.S., 31 U.S.App.D.C. 389 at page 392. It is interesting to note what the Burruases do not say: (1) they do not say that they had ever seen George Cooper prior to the robbery, (2) they do not say that his mask slipped, and (3) they do not say he had any distinctive marks on his person.

One is moved to ask why the jury convicted George Cooper?

First, the joinder was grossly prejudicial to George Cooper. Forced into a common trial with his brother Vernon Cooper, he was inevitably tarnished by evidence against Vernon Cooper. In Vernon's case, there was admitted into evidence articles allegedly stolen from the Burruases.

These and related circumstances filled the air in connection with the Government's attempt to support the otherwise incredible identification of George Cooper.

George Cooper was entitled to a separate trial upon the motion made by his attorney and denied by the court (Ex. 26).

Secondly, there was testimony concerning conversations in New York between George Cooper and the officer who brought Cooper back to Washington, D.C. These conversations add nothing to the evidence concerning identification. However, they do cast an aura of suspicion around George Cooper's conduct.

In spite of the improper joinder and the irrelevant conversations with the police officer, the jury was puzzled by the case. They sent in a note concerning the identification of George Cooper (Ex. 36).

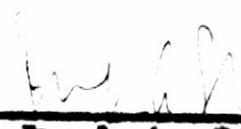
The motions for severance (F.R.Cr. P. 14) and for judgment of acquittal (F.R.Cr. P. 29(a)) should have been granted by the trial court.

VII. CONCLUSION

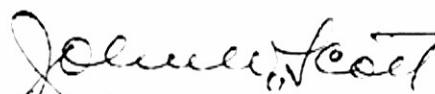
A. The entrance to the premises of Vernon Cooper and the search of his premises without a warrant of arrest or search was a violation of his rights under the Fourth Amendment to the Constitution of the United States, and any evidence seized pursuant to the unlawful search and arrest should have been suppressed. Because this evidence was admitted at the trial over the objection of the defendant, the judgment should be reversed.

B. The Government failed to produce credible evidence of the guilt of George Cooper, therefore his motion for judgment of acquittal should have been granted.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief
for Appellant was personally delivered at the office of
the U.S. Attorney, United States Court House, Washington 1,
D.C., this 9th day of August, 1963.


Jacob A. Stein

Counsel for Appellant
(Appointed by this Court)

BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,682

499

VERNON COOPER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 17,683

GEORGE COOPER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal From The United States District Court
For The District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

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QUESTIONS PRESENTED

In the opinion of the appellee, the following questions are presented:

- 1) Whether the police had probable cause to arrest appellant Vernon Cooper without a warrant, where the arrest was based on the corroborated information of an informant, who personally appeared before the police.
- 2) Whether there is sufficient evidence to sustain the jury verdict of guilty as to appellant George Cooper, where it was overwhelmingly shown that the crime was committed and appellant was positively identified at trial.



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* Cases chiefly relied upon are marked by asterisks.



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,682

VERNON COOPER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 17,683

GEORGE COOPER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

**Appeal From The United States District Court
For The District of Columbia**

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On July 2, 1962, appellants were jointly charged in a four count indictment with robbery (22 D.C. Code § 2901)

(1)

and housebreaking (22 D.C. Code § 1801¹ (J.A. 1). Following a verdict of guilty by the jury, appellant Vernon Cooper was sentenced to imprisonment for a period of twenty months to five years² and appellant George Cooper was sentenced to imprisonment for a period of three to ten years. Separate judgment and commitment orders were filed February 25, 1963 (J.A. 37, 38), and this appeal followed.

Appellant Vernon Cooper, by his District Court appointed counsel, filed a pre-trial motion to suppress articles seized by the police at the time of arrest and identification testimony of the victims to the crimes (J.A. 3-4). The United States filed an opposition to this motion (J.A. 4-7), and following a hearing on December 7, 1962, the motion was denied (J.A. 7). At that hearing Detective Blancato testified that for several months prior to May of 1962, the District of Columbia was plagued by a series of armed robberies of retail establishments. The victims of these crimes gave descriptions of their assailants to the police and these descriptions were similar in many instances. (J.A. 10.)

About noon on Sunday May 20, 1962, Naomi Quinones called police headquarters and informed an officer that she had information concerning these multiple robberies. Two police officers brought her to the robbery squad office. (J.A. 11.) There she told Detective Blancato that these appellants, as well as others, were involved in a series of armed hold-ups, naming "around fifteen or sixteen hold-ups altogether" and which individuals were responsible for each crime (J.A. 12). Thereupon, photographs of the persons she had accused were pulled from the police files³

¹ The first count charged housebreaking of the Burruss' residence, the second and third counts charged the robberies of Rev. and Mrs. Burruss, and the fourth count charged housebreaking of Mr. Buford's apartment.

² Said sentence to take effect at the expiration of the sentence imposed in Criminal Case No. 524-62, which case is now on appeal. *Vernon Cooper v. United States*, No. 17,669.

³ The police file also indicated that the appellant Vernon Cooper was a convicted felon.

and she identified "each subject by looking at his photograph as the subject she just told us had committed these various robberies" (J.A. 12). The photographs in fact matched the descriptions given by the victims. Further, appellant Vernon Cooper has a three inch scar on the side of his face which was mentioned by at least one witness and visible in the photograph. (J.A. 13.)

Miss Quinones then offered to call the appellants.⁴ While the police listened on an extension the appellant's sister, who answered the phone, stated "that George had left, he was going to North Carolina to a funeral, they were all leaving for a funeral in North Carolina" (J.A. 14). Vernon then came to the phone and after being told by Miss Quinones that she was going to police, he "raised his voice and began using all kinds of profanity * * *" and told her that if she ever told the police that he had committed these hold-ups, that he would kill her, and he also told her, 'How you know so much about these hold-ups unless you was driving the car?" (J.A. 15). She also told the police that part of the proceeds of the robberies were in the house and that the appellants had guns (J.A. 15).

Upon learning that the appellants would soon be leaving the city, the police went to the Lamont Street address and upon being admitted to the premises by appellant's sister were told that Vernon was upstairs. The officers went to Vernon's room and thereupon arrested appellant and upon searching his bedroom found guns, ammunition, a jar of pennies, sun glasses and clothing worn during the hold-ups. (J.A. 16, 17.)

On the basis of this testimony the District Court denied the motion to suppress and stated that probable cause for the arrest was clearly established, a warrant was not necessary and any delay by the police allowing

⁴ Telephone number 234-2389, which number the officer verified as being listed to Vernon Cooper, 1029 Lamont Street, Northwest (J.A. 13).

the appellants to become fugitives would be dereliction on the part of the officers (J.A. 18, 20, 21).

At trial Reverend Burruss and his wife testified that around 5:00 P.M. on March 10, 1962, the front doorbell of their church-home rang and Mrs. Burruss went to answer it (J.A. 22-23, 27). Upon seeing four gunmen at the door she screamed and Reverend Burruss ran towards the steps. He was stopped by two of the armed robbers (J.A. 23) and taken into a room in the church and there tied-up (J.A. 29). A gun, a jar full of pennies, some foreign coins, two rings, a watch and currency were taken from the Burruss' at that time (J.A. 24, Tr. 47-48). Both witnesses identified appellant Vernon Cooper, remembering clearly the scarred face (J.A. 24, 29). Reverend Burruss positively identified appellant George Cooper as the second man up the steps (J.A. 24, 26, Tr. 259). He could do this even though appellant's face was partially covered, for appellants were in the church approximately 35 minutes and he got a "very good look" at them as they were on the steps (J.A. 25). Mrs. Burruss testified that appellant George Cooper resembled one of the gunmen (J.A. 29, 30). Mrs. Betty Buford testified that she heard Mrs. Burruss scream and one man broke into her room looking for a safe (Tr. 165-167). George admitted to a police officer that he knew he was wanted and fled to New York City "because [the police] were getting too close to him and he wanted to get away" (J.A. 34, 35).

STATUTES INVOLVED

Title 22 U.S.C. § 2901 provides:

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than six months nor more than fifteen years.

Title 22 U.S.C. § 1801 provides:

Whoever shall, either in the night or in the day-time, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof of any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years.

SUMMARY OF ARGUMENT

Appellant Vernon Cooper was lawfully arrested upon the corroborated information given to the police by Naomi Quinones, an acquaintance of the appellant, who appeared personally at police headquarters. This corroboration consisted of: police knowledge of numerous unsolved robberies with similar *modus operandi*, appellant's criminal convictions, identification of photographs of appellant (procured from police files) by Miss Quinones, matching descriptions given by the victims, and a phone call by Miss Quinones to appellant's home which produced incriminating statements by appellant and clear indication that appellant was preparing to leave the city. Further, appellant was in fact where Miss Quinones indicated he would be. Clearly, the information given to the police that appellant committed numerous specified robberies and the overwhelming corroboration produced by police investigation gave probable cause for the arrest of appellant.

Appellant George Cooper was convicted upon the clear evidence that the crimes as charged in the indictment occurred and the identification of two eyewitnesses (Rev-erend Burruss testified positively and Mrs. Burruss stated that the appellant resembled the robber). Certainly

taking the view of the evidence most favorable to the Government it cannot be said that positive courtroom identification is insufficient to support a conviction.

ARGUMENT

I

There Was Probable Cause For The Arrest Of Appellant Vernon Cooper

The record shows that there was ample justification for appellant Vernon Cooper's arrest without a warrant. Appellant appears to claim that he was arrested on the basis of nothing more than the uncorroborated word of an unknown informer (Appellant's Brief p. 7-8). Such is not the true factual situation, for in fact investigation by the police furnished overwhelming corroboration of the informant's word. Probable cause for the arrest is clearly demonstrated by the following information known to the police at the time of arrest:

1. Prior to May of 1962, the District of Columbia was besieged by armed robberies of retail establishments and residential dwellings which police believed were perpetrated by the same group of persons. Descriptions of the robbers were given to the police by the victims.

2. On May 20, 1962, Naomi Quinones, informed the proper authorities that she had information regarding these crimes. At police headquarters she specified numerous crimes and named the persons, including appellants, responsible for each of these hold-ups.

3. Police files were checked and it was determined that appellant Vernon Cooper was a convicted felon. *Anderson Jones v. United States*, 106 U.S. App. D.C. 228, 271 F.2d 494 (1959), cert. denied, 362 U.S. 944; *Brooks v. United States*, 159 A.2d 876 (D.C. Mun. App. 1960).

4. Photographs were obtained from the police files and Miss Quinones identified the subjects, including appellants, as the ones who had committed the various crimes mentioned.

5. The descriptions, given by the victims of the armed hold-ups, matched the defendant's pictures identified by Miss Quinones, and particularly the appellant Vernon Cooper, due to a noticeable scar on his face.

6. Miss Quinones called the home of the appellants and elicited the fact that one of the appellants (George) had left for North Carolina and the other was planning to leave shortly.⁵ Further, the police heard appellant Vernon Cooper tell Miss Quinones that he would kill her if she told the police anything about the robberies and that the only way she could know so much was if she drove the get-away car. *Compare, Nance v. United States*, 112 U.S. App. D.C. 38, 299 F.2d 122 (1962).

Upon all this information, and the knowledge that appellants were planning to flee the jurisdiction, "police officers who would have failed to arrest appellant * * * would be guilty of gross dereliction of duty." *Jones v. United States, supra*.

Miss Quinones substantiated her reliability as an informer not only by the corroborating phone call but also by coming voluntarily and in person to police headquarters. In doing so she subjected herself to whatever inquiry, cross-examination or requirements of proof—including confrontation of appellants—that the police might put to her. *See Naples v. United States*, 113 U.S. App. D.C. 281, 307 F.2d 618 (1962); *Evans v. United States*, 242

⁵ Appellant complains that the police did not obtain an arrest warrant for him. Yet, clearly time was of the essence for already one appellant had left the city and the other was preparing to leave. Certainly no warrant was required. *Rabinowitz v. United States*, 339 U.S. 56, 65-66 (1950); *Jackson v. United States*, 112 U.S. App. D.C. 260, 302 F.2d 194 (1962); *Wrightson v. United States*, 98 U.S. App. D.C. 377, 236 F.2d 672 (1956).

F.2d 534 (6th Cir. 1957), *cert. denied*, 353 U.S. 976. Whether or not Miss Quinones had reason to be spiteful toward George Cooper, or expected a reward for the information she gave the police, or in fact had been drinking before appearing at police headquarters on May 20, 1963, is irrelevant, for the information she related and the overwhelming corroboration produced probable cause in the minds of trained police officers. See, *Mills v. United States*, 90 U.S. App. D.C. 365, 367, 196 F.2d 600, 602 (1952), *cert. denied*, 344 U.S. 826. Clearly, in light of all "the facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information sufficient in themselves to warrant a man of reasonable caution in the belief that an offense" has been committed and that the person to be arrested committed it there was overwhelming probable cause to arrest Vernon Cooper. *Mills v. United States, supra.*

Further corroboration of Miss Quinones' information was provided the police by the fact that appellant proved to be at the location Miss Quinones indicated. *Draper v. United States*, 358 U.S. 307 (1959); *Jones v. United States, supra*; *Christenson v. United States*, 104 U.S. App. D.C. 35, 259 F.2d 192 (1958). See also, *Naples v. United States, supra*; *Jackson v. United States, supra*; *Wrightson v. United States, supra*; *Johnson v. United States*, 110 U.S. App. D.C. 187, 290 F.2d 378 (1961); *Goldsmith v. United States*, 107 U.S. App. D.C. 305, 277 F.2d 335 (1960). In all of these cases probable cause for the arrest was found. In each, the word of an informer supported by a minimum of corroboration was all that linked the defendant to the crime charged.

In sum, there was sufficient basis in law and on the facts to warrant a prudent, trained and experienced law enforcement officer in the belief that appellant Vernon Cooper was responsible for known robberies in the District of Columbia, and the arrest of appellant, based on probable cause, was required. Thus the trial court correctly denied the motion to suppress and admitted into

evidence the stolen gun seized from appellant's room following the lawful arrest.

II

There Was Ample Evidence To Support The Jury's Conviction Of Appellant George Cooper

Appellant's contention that the evidence does not support the verdict is without merit. Appellant does not claim that the Government failed to prove the crime but, by the attack on the sufficiency of the evidence, claims only that the Government failed to establish the identity of George Cooper as one of the four armed robbers. This contention is utterly baseless; it is bottomed on the false assumption that the testimony of the Burruss' is entitled to no weight whatsoever. Reverend Burruss positively identified the appellant in open court as his assailant and Mrs. Burruss testified that there was a similarity between the appellant and the robber. All the facts surrounding the identification, including the masks over appellant's face, the length of time to observe him, the use of guns, distinctive marks and prior knowledge were for the jury to weigh and determine as issues of fact. Clearly the issue of identity was determined adversely to the appellant. Appellant cites not a single case in which a positive identification of a defendant is insufficient for a jury to convict. Certainly there is more than sufficient evidence here where a second witness indicates a resemblance and appellant admits flight. It is clear conjecture to say that George was prejudiced by being tried with his co-appellant⁶ and that he was convicted on the evidence thereupon introduced. The jury verdict in a criminal case must be sustained where there is substantial evidence to support it taking the view most favorable to the government. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *Curley v. United States*, 81 U.S. App. D.C. 389, 160 F.2d 229 (1947),

⁶ The record indicates that appellant George Cooper did not request a severance. Rule 52(b), Fed R. Crim. P.

cert. denied, 331 U.S. 837; Morton v. United States, 79 U.S. App. D.C. 329, 147 F.2d 28 (1945); cert. denied, 324 U.S. 875.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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